CMPMO No.221 of 2007.

27.12.2007. Present: Mr. Ramakant Sharma, Advocate, for the petitioner.

Mr. R.K. Gautam, Senior Advocate, with Mr. Naveen Bhardwaj, Advocate, for the respondent.

It is one of the rare cases where a party to a suit, (the plaintiff and not the defendant) has shown gross negligence with respect to adducing his own evidence and the Presiding Officer of the learned Court below has also been unduly and grossly liberal in granting adjournment after adjournment, either in total ignorance of law or in patent breach of the mandatory and binding legal provisions.

Issues were framed in the suit on 21st April, 2006. Four months' time was given to the plaintiff to produce evidence. Despite a binding stipulation contained in Order 16 Rule 1 of the Code of Civil Procedure, neither within 15 days from the date of framing of Issues nor at any time thereafter till this date did the plaintiff file any list of witnesses. Despite the plaintiff's failure to file any list of witnesses, the learned trial Court merrily went on giving adjournment after adjournment to the plaintiff for production of his evidence in the trial Court and at times even allowed the summoning of the witnesses despite the fact that no list as such had been filed by the plaintiff. Actually since the plaintiff had failed to file any list of

witnesses within 15 days from the date of framing of Issues, as statutorily required under Order 16 Rule 1 CPC, the order dated 24th August, 2006 passed by the learned Court below permitting the plaintiff the luxury of taking steps for summoning of witnesses was itself patently illegal. Similarly on 7th November, 2006 ordering the issuance of dasti summons for service of witnesses was equally wrong as well as illegal. Be that as it may, the learned Court below went on granting opportunity after opportunity to the plaintiff to produce witnesses and on occasions more than one termed the opportunity as "last opportunity". The plaintiff was so stubborn in his designs and plans of not adducing his evidence that despite this liberal help from the learned Court below he did not produce any witness nor adduce any evidence until he devised a plan of filing an application for amendment of the plaint. Even though I do not propose to comment upon the plaintiff's step of filing the application for amendment, I do wish to observe that in view of the aforesaid circumstances the learned trial Court ought to have closed the plaintiff's evidence. It, however, did not choose to do so.

After hearing the learned counsel for the parties and in view of the fact that the plaintiff-respondent did not produce evidence in the Court despite opportunities granted, as many as seven of them after the framing of Issues, I

hereby by a specific order of this Court direct that the evidence of the plaintiff shall be treated as closed.

The aforesaid order, however, shall not be treated as any comment or any expression of opinion by this Court with respect to the disposal of the application of the plaintiff-respondent for amendment of the plaint. Such application shall be disposed of by the learned trial Court on its merits and in accordance with law.

Record be sent back to the learned trial Court where the parties through their learned counsel are directed to appear on 24th March, 2008.

The petition is disposed of.

CMP No.818 of 2007.

In view of the disposal of the main petition, this application is disposed of. Interim order dated 10th October, 2007 shall stand vacated.

27th December, 2007. (V.K. Gupta), C.J.
(tr)